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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DARIUS MATTHEW SHADZAD,

Defendant and Appellant.

2d Crim. No. B203754
(Super. Ct. No. F392359)
(San Luis Obispo County)

Darius Matthew Shadzad appeals the judgment following his conviction by a jury for possession of a deadly weapon while in a penal institution. (Pen. Code, § 4502, subd. (a).)¹ After the trial court found he had suffered two prior convictions for serious or violent felonies, he was sentenced to 25 years to life as a third strike offender. (See §§ 667, subds. (d) & (e), 1170.12, subds. (b) & (c).) Shadzad contends there was insufficient evidence to support a finding that he knowingly possessed a deadly weapon, the trial court abused its discretion in denying his *Romero* motion,² and his sentence constituted cruel and unusual punishment. We affirm.

FACTS AND PROCEDURAL HISTORY

While housed in a hospital unit at California Men's Colony in San Luis

¹ All statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Obispo, Shadzad covered the window of his cell with paper and started a commotion inside his cell. Among other things, he broke a window in his cell. When correctional officers threatened to use pepper spray, Shadzad removed the paper from the window. Responding to an order, Shadzad placed a six- to seven-inch piece of metal near the window for the correctional officer to see. Officers looking through the window also saw torn up bed clothes all over the cell, and shards of broken window glass on the floor. Shadzad eventually placed his hands through the food slot in his door in order to permit officers to handcuff him.

An officer placing leg restraints on Shadzad noticed blood on one of his socks, and that a sharp piece of glass had lodged underneath the sock. The piece of metal was on the floor and was identified as having been removed from the bed in the cell.

Shadzad testified that he broke the window while shadow boxing, and had attempted to flush the pieces of glass and metal down the toilet. He testified that he did not place the glass in his sock, and that the glass may have attached itself to the sock when he was attempting to dispose of it.

Shadzad was charged with possession of a deadly weapon while in a penal institution (§ 4502, subd. (a)), and with manufacturing a deadly weapon in prison. (§ 4502, subd. (b).) The possession charge covered the glass and metal piece; the manufacturing charge related to the metal. A jury convicted Shadzad of possession of a deadly weapon, but acquitted him on the manufacturing of a deadly weapon charge.

DISCUSSION

Substantial Evidence Supports Conviction

Shadzad contends there was insufficient evidence to support his conviction for possession of a deadly weapon while in a penal institution. In evaluating such a claim, we review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Snow* (2003) 30 Cal.4th 43, 66.) All conflicts in the evidence are resolved in favor of the judgment and all reasonable

inferences are drawn in its favor. (*People v. Kelso* (1976) 64 Cal.App.3d 538, 542.)

Reversal is required only when there is no substantial evidence to support the conviction under any hypothesis. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) When the evidence reasonably supports the finding of the trier of fact, reversal is not warranted even if the evidence might reasonably be reconciled with a contrary finding. (*Ibid.*) Here, we conclude that there was substantial evidence supporting the conviction.

Section 4502, subdivision (a) prohibits any person confined in a penal institution from possessing a "sharp instrument."³ To show a violation of the statute, the prosecution must prove the defendant knew the prohibited object was in his or her possession, but need not prove the purpose for possessing the weapon. (*People v. Saavedra* (2007) 156 Cal.App.4th 561, 571.)

Shadzaad concedes that the piece of glass was a sharp instrument that was found inside his sock after he broke a window in his cell, but asserts that there was no evidence that he placed the glass in his sock or knew it was there. Shadzaad relies on the absence of evidence that the glass had been fashioned or modified into a weapon, and on speculation that the glass might have lodged in his sock when the window glass fell to the floor. He argues it "is more likely" that the glass piece landed in his sock during the commotion in his cell than that he intentionally concealed the glass in his sock.

We question whether Shadzaad's explanation is "more likely," but concede for argument's sake that it is a possibility. Nevertheless, even if the evidence could be reconciled with Shadzaad's explanation, reversal is not warranted when the evidence reasonably justifies the actual findings of the trier of fact as it does here. (*People v. Rodriguez, supra*, 20 Cal.4th at p. 11.)

³ Section 4502, subdivision (a) provides in relevant part: "Every person who, while at or confined in any penal institution . . . , possesses or carries upon his or her person or has under his or her custody or control any . . . dirk or dagger or sharp instrument . . . is guilty of a felony"

No Abuse of Discretion in Denial of Romero Motion

Shad zad contends the trial court abused its discretion by denying his motion to dismiss one of his prior strike convictions for purposes of sentencing. (*People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at p. 504.) He argues that the relatively minor nature of his current offense and his nonviolent criminal history place him outside the mainstream of career criminals who are the principal target of the Three Strikes law.

A trial court has limited discretion under section 1385 to strike prior convictions in three strikes cases. The court must consider "whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) We review the denial of a section 1385 motion under the abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 373-374.) There was no abuse of discretion in this case.

First, the current offense, although nonviolent itself, created a dangerous risk of future violence. Second, his prior offenses include the serious or violent strike offenses of attempted robbery in 1996 and robbery in 2004, as well as non-strike offenses including a 1992 theft, drug offenses in 1994, 1996 and 1997, and a 1996 second degree burglary conviction. These offenses are of increasing severity and, as the trial court stated, support the conclusion that Shad zad had engaged in "almost continuous violations of the law or incarceration at various penal institutions, whether that be county jails or state prison or federal penitentiaries."

The trial court also noted reports of Shad zad's mental problems including drug abuse as well as periods when he appeared to be turning his life around. The mental problems, however, did not decrease the risk of future criminal activity and the attempts to turn his life around were unsuccessful.

Sentence Not Cruel or Unusual Punishment

Appellant contends that his 25 years to life sentence constitutes cruel and unusual punishment under the state and federal Constitutions. (Cal. Const., art. I, § 17; U.S. Const., 8th Amend.) He argues that the sentence is grossly disproportionate to the severity of the offense. We disagree.

The Eighth Amendment to the United States Constitution "prohibits imposition of a sentence that is grossly disproportionate to the severity of the crime." (*Rummel v. Estelle* (1980) 445 U.S. 263, 271.) But the "gross disproportionality principle reserves a constitutional violation for only the extraordinary case." (*Lockyer v. Andrade* (2003) 538 U.S. 63, 77.) Shad zad's sentence does not present an extraordinary case. Shad zad's current offense is more serious than those where lengthy sentences have been upheld in recent cases by the United States Supreme Court. (*Ewing v. California* (2003) 538 U.S. 11, 30-31 [theft of \$1,200 worth of golf clubs]; *Andrade*, at p. 77 [theft of \$150 worth of videotapes].)

A sentence is cruel or unusual under California law if "it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*People v. Norman* (2003) 109 Cal.App.4th 221, 230, quoting *In re Lynch* (1972) 8 Cal.3d 410, 424.) In making the determination, the court should consider the nature of the offense and offender, and compare the sentence with sentences imposed for more serious crimes in California, and imposed for the same crime in other jurisdictions. (*Ibid.*)

Shad zad's current offense would not qualify as a first or second strike, but possession of a deadly weapon in prison is a serious crime that creates an extreme danger of violence. "Fundamental notions of human dignity are not offended by the prospect of exiling from society those individuals who have proved themselves to be threats to the public safety and security." (*People v. Ingram* (1995) 40 Cal.App.4th 1397, 1416, overruled on another ground in *People v. Dotson* (1997) 16 Cal.4th 547, 560, fn. 8.) In light of the nature of the offense and the offender, Shad zad's sentence does not shock the

conscience or offend human dignity. His sentence conforms to sentences for repeat offenders under the Three Strikes law and is proportionate to sentences for repeat offenders in other states. (See, e.g., *People v. Romero* (2002) 99 Cal.App.4th 1418, 1433; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1338; *People v. Goodwin* (1997) 59 Cal.App.4th 1084, 1093-1094.)

The judgment is affirmed.
NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

John A. Trice, Judge

Superior Court County of San Luis Obispo

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